IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 2786 to 2798 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE SPECIAL LAND ACQUISITION OFFICER & 1 - Appellants
Versus
SHIVABHAI CHHAGANBHAI - Respondent(s)

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Appearance :

MR SUNIT S SHAH, GOVERNMENT PLEADER for Appellants in First Appeal Nos.2786 to 2791 of 2007

MS KRINA P CALLA, A.G.P. for Appellants in First Appeal Nos. 2792 to 2798 of 2007.
MR GM AMIN for Respondent/claimants.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 18/06/2007

ORAL COMMON JUDGMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Admitted. Mr.G.M.Amin, learned Counsel, waives

service of notice on behalf of the claimant/s in each appeal. Having regard to the facts of the case, the appeals are taken up for final disposal today.

All these appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated December 30, 2005, rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (R) at Navrangpura in Land Acquisition Case Nos. 1768 of 1996 to 1780 of 1996, by which the claimants have been awarded additional amount of compensation at the rate of Rs. 20.50 Ps. per sq.mt. for their acquired lands over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.1.35 ps. per sq.mt. for irrigated lands and Rs. 0.90 Ps. per sq.mt. for non-irrigated lands by his award dated October 18, 1995.

2. The Executive Engineer, Narmada Yojna, Division No.3/5, Dholka, proposed to the State Government to acquire lands of village Sarandi, Taluka : Dholka,

District : Ahmedabad for the public purpose of construction of a canal under Narmada Project. On perusal of the same, the State Government was satisfied that the lands of village Sarandi mentioned therein were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on November 13, 1992. The interested persons were served with notices as required by Section 4 of the Act. They had lodged their objections against the proposed acquisition. After making necessary inquiry, the Special Land Acquisition Officer forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Sarandi mentioned in the notification published under Section 4 of the Act were needed for the public purpose of construction of a canal under Narmada Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on October 19, 1993. The interested persons were thereafter served with notices for determination of compensation payable to them. The

claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 30/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated October 18, 1995 offered compensation to the claimants at the rate of Rs.1.35 Ps. per sq.mt. for irrigated lands and Rs. 0.90 Ps. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made to them was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (R) at Navrangpura, where they were numbered as Land Acquisition Cases No.1768 of 1996 to 1780 of 1996.

3. On behalf of the claimants, witness Mafabhai Virambhai Bharvad was examined at Exh.36. After giving particulars of the lands acquired, the witness stated that all the lands acquired were even and irrigated. According

to the said witness, each claimant was able to raise crops of cotton, paddy, cumin-seeds, wheat, juvar etc. What was asserted by the witness was that each claimant was earning net income of Rs.40,000/- per year per Bigha from the sale of agricultural produces. The witness further informed the Court that the boundaries of his village were touching the boundaries of village Kariyana. What was pointed out by the said witness to the Court was that the lands of village Kariyana were also acquired for the purpose of construction of a canal under Narmada Project and that the Reference Court had awarded compensation to the claimants in those cases at the rate of Rs.21/- per sq.mt. The witness produced award of the Reference Court relating to the lands of village Kariyana at Exh.21. The witness also produced D.L.R.Map at Exh.24 to indicate that the boundaries of the two villages were common. According to this witness, the lands which were acquired from village Kariyana were similar, in all respects, to the lands acquired in the instant case.

4. Though this witness was cross-examined at length by the learned Government Pleader, nothing substantial

could be elicited, nor the assertion made by the witness that the lands, which were previously acquired from village Kariyana, were similar in all respects to the lands acquired in the instant case, could be demonstrated to be untrue.

5. On behalf of the acquiring-body, witness Gautamkumar Manilal Patel was examined at Exh.51. At the relevant time, the said witness was discharging duties as a Deputy Executive Engineer in Narmada Nigam. In his examination-in-chief itself, the witness mentioned that the lands acquired were irrigated lands and that each claimant was able to raise crops of cotton, paddy, wheat etc.

In cross-examination by the learned Counsel for the claimants, the witness mentioned that after the acquisition proceedings were over, he was posted in Division No.8 and was not conversant at all with the procedure undertaken for the purpose of acquiring lands in the instant case. The witness was confronted with the official-map and had to admit that the boundaries of village Kariyana were touching the boundaries of village

Sarandi. The witness further explained in his cross-examination that the first survey number of village Kariyana was just adjoining another survey number of village Sarandi from which the lands were acquired in the instant case. The witness had to admit that no documentary evidence was produced either by the State Government or the acquiring-body before the Special Land Acquisition Officer to enable him to determine the market value of the lands acquired in the instant case.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that previous award of the Reference Court relating to the lands of village Kariyana was a relevant piece of evidence and furnished good guidance for the purpose of determining market value of the lands acquired in the instant case. The Reference Court noticed that with reference to lands of village Kariyana also, notification issued under Section 4(1) of the Act was published in the Official Gazette on November 13, 1992. In the ultimate analysis, the Reference Court has awarded additional amount of compensation at the rate of Rs.20.50 Ps. per sq.mt. giving

rise to the above-numbered appeals.

7. This Court has heard Ms.Krina P.Calla, learned Assistant Government Pleader for the appellants, and Mr.G.M.Amin, learned Counsel for the claimants, at length and in great detail. This Court has also considered the paper-book supplied by the learned Counsel for the claimants, which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

8. It is true that the claimants could not make good their case that the lands acquired were so fertile that each claimant was able to earn net income of Rs.40,000/- per Bigha per year from the sale of agricultural produces. However, the said fact pales into insignificance, as compensation was never claimed on yield basis, nor higher compensation was claimed on the basis of comparable sale instances. What was relied upon by the claimants for the purpose of claiming enhanced compensation was previous award of the Reference Court relating to the lands of village Kariyana, which was produced at Exh.21. A perusal of Exh.21 makes it evident

that the lands of village Kariyana were acquired for the public purpose of construction of a canal under Narmada Project pursuant to publication of notification under Section 4(1) of the Act in the Official Gazette on November 13, 1992. Therein, the Special Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.0.75 ps. per sq.mt. Feeling aggrieved, the claimants had sought references. Accordingly, references were made to the District Court, Ahmedabad (R) at Navrangpura, where they were registered as Land Acquisition Case Nos.1750 of 1996 to 1767 of 1996. In those cases, on behalf of the claimants, witness Dahyabhai Manilal Patel was examined at Exh.31; whereas on behalf of the acquiring-authorities, Deputy Executive Engineer was examined at Exh.50. On appreciation of evidence adduced by the parties, the Reference Court by common judgment and award dated August 31, 2004 held that the claimants were entitled to additional compensation at the rate of Rs.20.50 Ps. per sq.mt. for their acquired lands. During the course of hearing of the appeals, Mr.G.M.Amin, learned Counsel for the claimants, has produced xerox copy of judgment dated

November 24, 2006 rendered by the High Court in First Appeal Nos. 2414 to 2431 of 2006, for perusal of the Court. It indicates that feeling aggrieved by the common judgment and award dated August 31, 2004 rendered by the Reference Court in Land Acquisition Case Nos.1750 to 1767 of 1996, appeals were preferred and the High Court, by judgment dated November 24, 2006 has dismissed the said appeals. It is well settled that the previous award of the Reference Court relating to the lands of a village, which has attained finality, can be relied upon as a good piece of evidence for the purpose of determining the market value of similar lands acquired subsequently from the adjoining village. As noticed earlier, relevance of previous award of the Reference Court relating to the lands of village Kariyana is satisfactorily established by the claimants. Under the circumstances, this Court is of the opinion that no error is committed by the Reference Court in placing reliance on the previous award relating to the lands of village Kariyana for the purpose of determining the market value of the lands acquired in the instant case.

9. The contention that four sale-deeds, which were produced by the acquiring-authorities, have not been considered, nor discussed in the impugned judgment and, therefore, the appeals should be accepted, has no substance. It may be mentioned that though sufficient opportunity was given to the acquiring-authorities to adduce evidence, relevance of none of the four sale-deeds could be established at all. Witness Gautamkumar Manilal, who was examined by the acquiring-body, has not mentioned a word about any of the sale-deeds, which were produced with list Exh.43. It is well settled that only comparable sale instances can be taken into consideration while determining the market value of the lands acquired from the same village. From the contents of the sale-deeds, which were produced by the acquiring-body, it is evident that they were executed between 1999 and 2001. Thus, none of the sale-deeds produced was proximate in point of time to the notification issued in the instant case for acquiring the lands in question, nor it could be even remotely established by the acquiring-authorities that the lands, which were subject matter of sale-deeds, were similar in all respects to the lands acquired in the instant

case. Therefore, there is no manner of doubt that those sale-deeds did not furnish good guidance for the purpose of determining market value of the lands acquired in the instant case. Under the circumstances, the impugned award cannot be interfered with on the ground that they were ignored by the Reference Court.

10. On reappreciation of evidence adduced by the parties, this Court is of the opinion that correct findings of facts have been recorded by the Reference Court to which well settled principles of law have been applied. The learned Assistant Government Pleader could not persuade the Court to take a view different than the one taken by the Reference Court on appreciation of evidence. Therefore, the appeals, which lack merits, deserve dismissal.

For the foregoing reasons, all the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

[J.M.PANCHAL,J.] [SMT.ABHILASHA KUMARI,J.]

(patel)